

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 11, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:07HD-122

HAWAII

Withdrawal From Governor's Proclamation dated October 17, 1930; Set Aside to the Agribusiness Development Corporation for Irrigation Water Sources; and Issuance of a Right-of-Entry Permit to Agribusiness Development Corporation, Kau, Hawaii, Tax Map Keys: (3) 9-5-5:portion of 3; 9-6-6:portion 9 and 10; 9-7-1:portion 1.

APPLICANT:

Agribusiness Development Corporation (ADC)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portions of Government lands of Kau situated on Hawaii, identified by Tax Map Keys: (3) 9-5-5:portion of 3; 9-6-6:portion 9 and 10; 9-7-1:portion 1, as shown on the attached map labeled Exhibit A.

AREA:

To be determined.

ZONING:

State Land Use District:	Agriculture/Conservation
County of Hawaii CZO:	AG-20

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___x (for water use only)

CURRENT USE STATUS:

9-5-5:portion 3	RP 7421	Felix Ibarra	Pasture purposes for 140 ac
	RP 7433	Richard Souza	Pasture purposes for 47.690 ac
	RP 7272	Daleico	Pasture purposes for 141 ac
	LOD 28289	County of Hawaii	Drainage easement
9-6-6:portion 9	GEO 4156	DLNR - DOFAW	Addition to Kau Forest Reserve
9-6-6:portion 10	GEO 4156	DLNR - DOFAW	Addition to Kau Forest Reserve
9-7-1:portion 1	RP 7234	Wood Valley Water & Farm Coop	Water purposes from Weda Tunnel
	RP 7267	Wood Valley Water & Farm Coop	Water purposes from Noguchi Tunnel
	RP 7054	Kapapala Ranch	Water purposes from Makakupu Tunnel
	RP 7085	Kau Agribusiness Co	Water purposes from Noguchi tunnel and Keaiwa Reservoir
	RP 7426	Kuahiwi Contractors	Water purposes from Mountain House Tunnel

PURPOSE:

Irrigation water sources purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 2) Pay for all costs associated with the Division of Forestry

and Wildlife conducting a public hearing.

BACKGROUND:

Agribusiness Development Corporation is a state agency established to help transition Hawaii's agricultural industry from plantation operations to diversified agricultural operations. One of ADC's main goals is to preserve agricultural infrastructure, especially irrigation systems abandoned by the various plantation companies for current or future agricultural use.

For the Kau District Project, ADC wishes to acquire management control of the various tunnel sources located on three (3) State lands. There are approximately 30 tunnel sources within the Kau District. Parcels 9-5-5:3 and 9-6-6:10 have only 1 tunnel source each. Parcel 9-7-1:1 has approximately 28 separate tunnel sources.

The tunnels were originally developed by Hawaiian Agricultural and Hutchinson Sugar Company, both subsidiaries of C. Brewer & Co., Ltd.

The water was used primarily for fluming sugarcane and for wash water in the mills. In the past decade, some of the tunnels and transportation systems were converted to provide water to farmsteads and diversified crop endeavors. Diversified agriculture, livestock pasturage, orchard and field crops are rapidly expanding with the Kau District.

ADC plans on entering into a long-term agreement with the newly formed Kau Agricultural Water Cooperative District (KAWCD) for the operation and maintenance of the water sources. KAWCD will be the master agency to manage the system and it may in turn work with and enter into agreements with seven or more regional water distribution entities. Agricultural water users with the regional systems will be supplied water for crops, livestock, and orchard uses.

The majority of the improvements will be done on the transmission lines and reservoir that are located on private lands within the regional water system. The water users and landowners will be responsible for funding these repairs on private property.

There will be need for refurbishment of the tunnel water sources and replacement or upgrades to the transportation pipelines and flumes located on State lands. The amount of work to be performed within the State lands will need to be determined on a case-by-case basis.

Based on priority and needs, ADC will probably request for CIP funding.

On March 1, 2007, the ADC Board of Directors approved to take on the Kau irrigation system as a project.

By letter dated April 10, 2007, Mr. Alfredo Lee, Executive Director for ADC is requesting the Land Board's approval of the set aside.

DISCUSSION:

The agency's proposed request for the set aside is appropriate and satisfies a public purpose - to manage and preserve agricultural infrastructure abandoned by the sugar plantations to help foster current and future agricultural users in the Kau District on the island of Hawaii.

Comments were solicited from:

DHHL	No response
Engineering	No response
DOFAW	No objections
Historic Preservation	No response
OCCL	No comments
CWRM	See Exhibit C
ADC	No response
County Planning	No comments
County Public Works	No comments
County Water	No objections
OHA	Continuous flow from mauka to makai, with appropriate flow rates, must be maintained in all parts of the watershed.

At this time, we are uncertain what is the width or length of the system and the exact location of the 30 tunnels. ADC and KAWCD will be hiring surveyors to collect this information. It may be necessary for sections of the system to be withdrawn from Revocable Permit Nos. 7421, 7433 and 7272. If the Permittee's are using water from the system, they will have to work with ADC and KAWCD.

Governor's Executive Order No. 4156 has reservations to the State of Hawaii, it's successors and assigns, of all existing flumes, pipelines, roads, trails, tunnels and springs wording to allow us to assign those rights to ADC via a set aside document. Those items were never placed under the management control of DOFAW. Therefore, no withdrawal document or a public hearing is necessary.

To withdraw the tunnels, flumes, pipelines, and springs from Governor's Proclamation October 17, 1930, a public hearing must be done by the Department. Therefore, all costs should be paid by ADC and KAWCD to help expedite this process.

ADC is requesting the Land Board's favorable consideration for a right-of-entry permit for management purposes. This will allow ADC and KAWCD start the necessary fieldwork to inspect the system and to meet with water users of the system. Surveying is necessary to

prepare maps and description of the tunnels, springs, flumes, pipelines, etc.. for the set aside document.

Upon the signing of the set aside document by the Governor, staff is recommending Land Division water permits be transferred to ADC. By managing the water permit tenants ADC can transition the tenants through KAWCD. ADC will handle transferring water rent payments to the Office of Hawaiian Affairs (20%) and Department of Hawaiian Home Lands (30%). In 2003, we transferred 8 tenants at Kekaha, Kauai to ADC. The transition occurred without incident. The remaining pasture month-to-month tenants will remain with Land Division.

Should ADC require access to work on the tunnels, springs, flumes, pipelines, etc. a request for a right-of-entry permit will be submitted to DOFAW or Land Division tenants. Staff notes to get to the tunnels or springs requires hiking uphill through thick vegetation because there is no marked trail or a jeep road.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor issuance of an executive order withdrawing tunnels, flumes, pipelines, and springs from the Governor's Proclamation dated October 17, 1930, subject to:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Agribusiness Development Corporation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

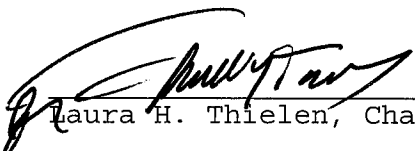
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a management right-of-entry permit to Agribusiness Development Corporation covering the subject area, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Transfer Revocable Permit Nos. S-7234, S-7267, S-7054, S-7085, and 7426 to Agribusiness Development Corporation.
5. If applicable, authorize the withdrawal of the irrigation system from Revocable Permit Nos. 7421, 7433 and 7272.
6. Authorize the Division of Forestry and Wildlife to conduct a public hearing to withdraw tunnels, flumes, pipelines, and springs from Governor's Proclamation dated October 17, 1939 (Kau Forest Reserve) pursuant to Section 183-11 and 12, Hawaii Revised Statutes, as amended.
7. Authorize the Chairperson to set the date and time for a public hearing and appoint a Hearing Master.

Respectfully Submitted,

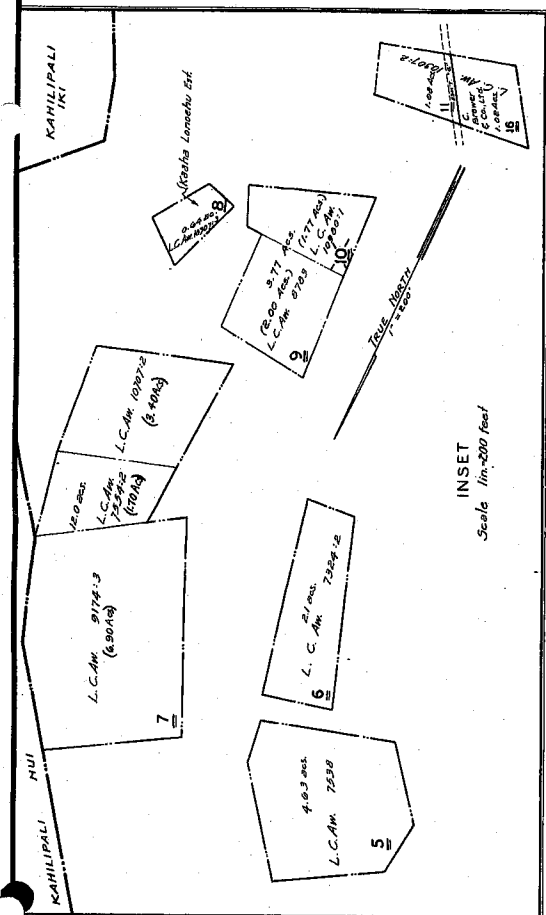


Charlene E. Unoki
Assistant Administrator

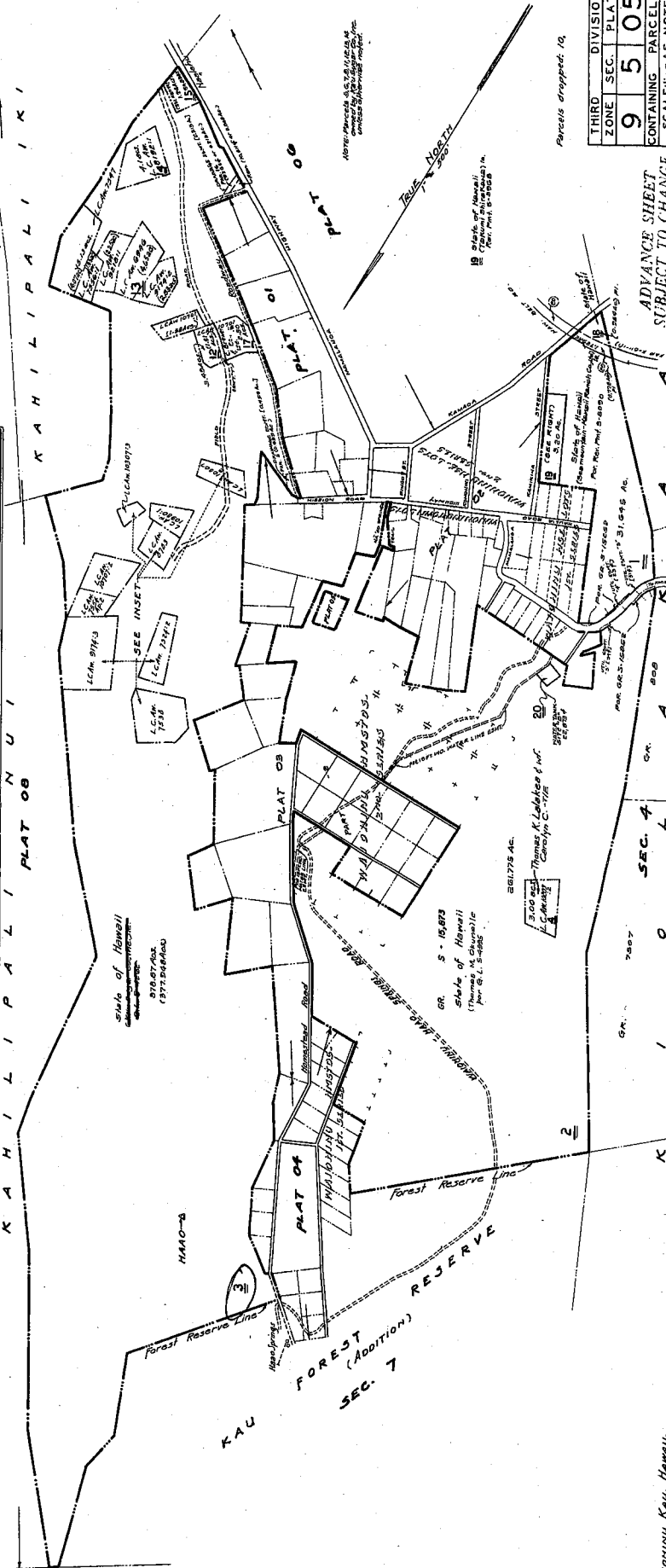
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



INSET
Scale 1 in. = 200 feet



THIRD	DIVISION	
ZONE	SEC.	PLAT
9	5	05

CONTAINING PARCELS
SCALE: 1" = 40' AS NOTED

ADVANCE SHEET
SUBJECT TO CHANGE

PRINTED

EXHIBIT "A"

POB. OF WAIONIMU, KAU, HAWAII.

Dwg. No. 2553
Source: Tax Maps Bureau
By: P.K. & H.N. Oct. 1995

[illegible]

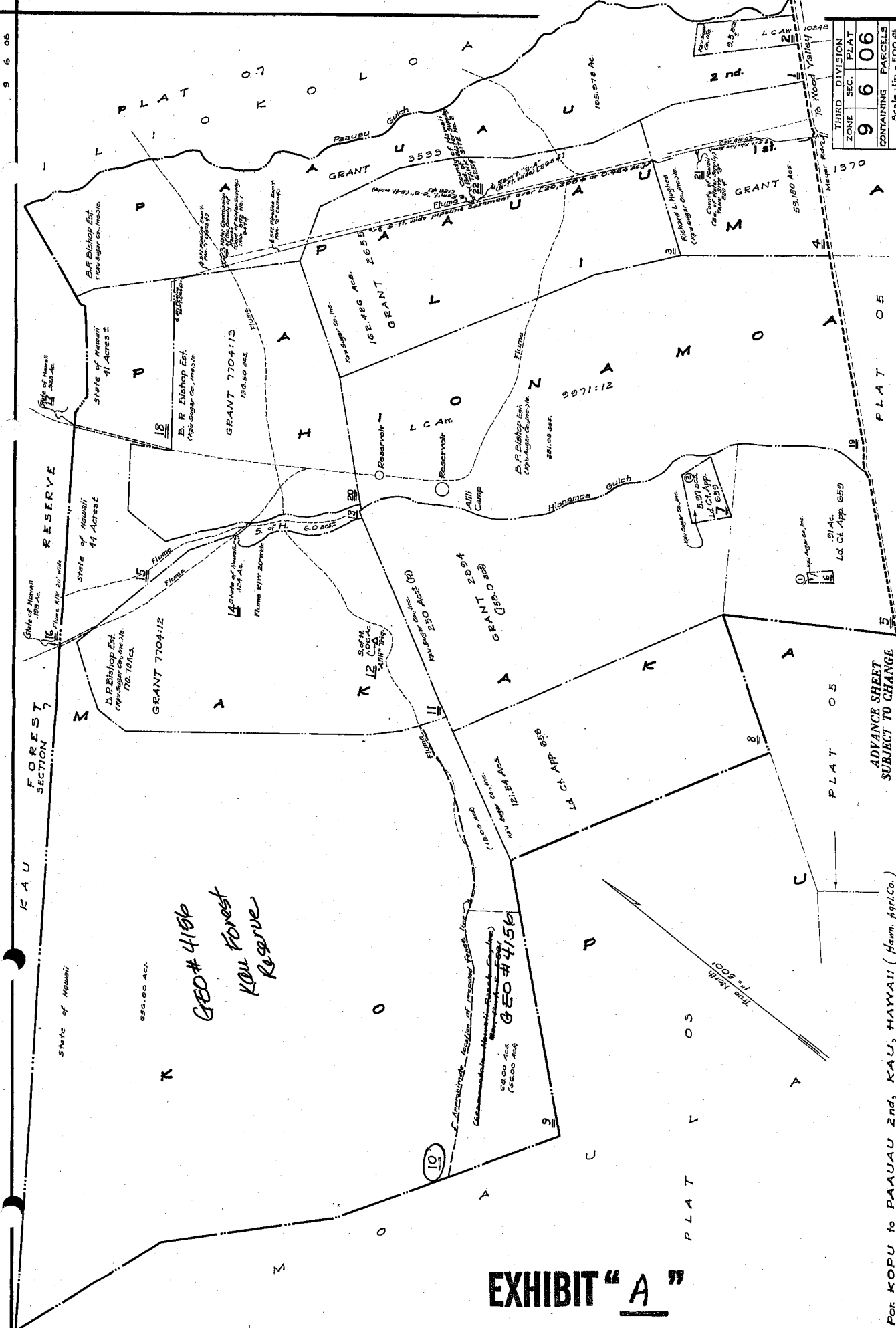


EXHIBIT "A"

THIRD DIVISION	
ZONE	SEC.
9	6
06	06
CONTAINING PARCELS	
Scale: 1 in. = 500 ft.	

PRINTED

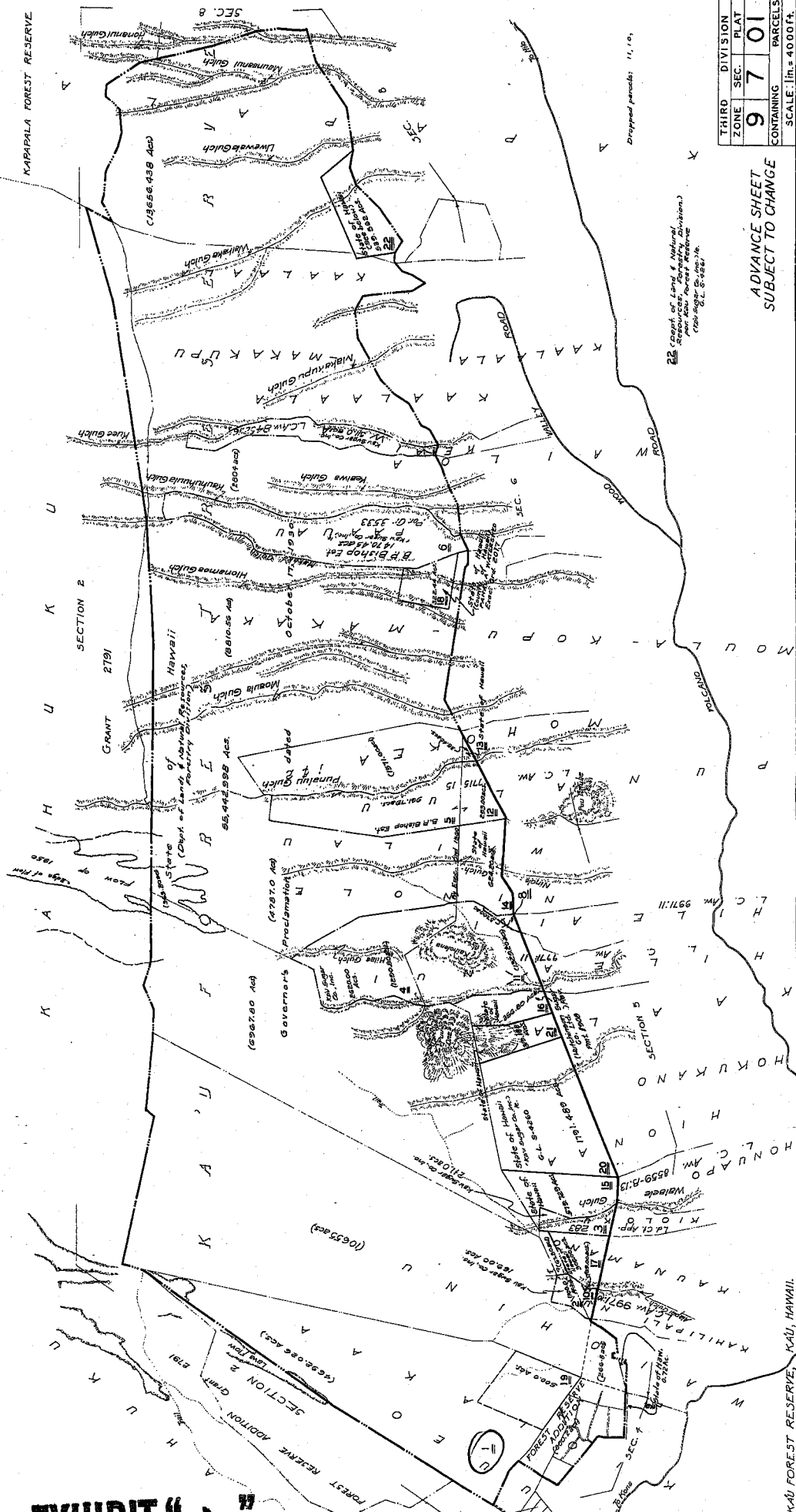
ADVANCE SHEET
SUBJECT TO CHANGE

FOR KOPU to PAAUUAU 2nd, KAU, HAWAII (Hawm. Agri. Co.)

EXHIBIT "A"

Dwg. No. 2518
Source : The Maps Bureau & Survey Department
By : L.S.M. - August, 1935.

KA'U FOREST RESERVE, KA'U, HAWAII.



LINDA LINGLE
Governor



58507
ALFREDO A. LEE
Executive Director

RECEIVED
LAND DIVISION

RECEIVED

2007 APR 12 A 9:28

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION 207 APR 11 A 8:01

235 S. Beretania Street, Room 205
Honolulu, HI 96813

Phone: (808) 586-0186 Fax: (808) 586-0189

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

April 10, 2007

The Honorable Peter Young, Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96813

Dear Mr. Young:

After learning about our mission and some of our projects, the Kau farmers and landowners approached the Agribusiness Development Corporation (ADC) last year to work with them on their irrigation system. The request involves ADC taking over management control of the Kau district irrigation water sources and working out a long-term operation and maintenance agreement with the users. ADC requested the interested parties to form a cooperative and conduct public meetings to explain their objectives. At the end of last year, the stakeholders voted to form such a cooperative and to work with ADC on this project.

The ADC board of directors visited the Kau project area in January to confirm the presence of a thriving agricultural industry in the area and its potential to grow if resources, such as water, are made available to the producers. At its March 1, 2007 meeting, the ADC board of directors approved to take on the Kau irrigation system as a project.

For your information, ADC has been working with your Land Division staff on this project. Enclosed please find the Request for State Land Application. In the meantime, please give me a call at 586-0186 if you have any questions on this matter.

Sincerely,

Alfredo A. Lee
Executive Director

c: The Honorable Sandra Kunimoto
Mr. John Cross

EXHIBIT "B"

**STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES**

**REQUEST FOR STATE LANDS
APPLICATION FORM**
(Government Agencies)

For DLNR use only:

Date of request: _____
Date request recvd: _____
Date request no. issued: _____
Request number: _____
Land Code: _____
Unit Code: _____
Status: Future
Type of Request: _____
Assigned Land Agent: _____

I. APPLICANT

Should a land disposition result from your application, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable, full legal agency names and addresses.

Applicant name(s): Agribusiness Development Corporation (ADC)
Government Agency Name

Mailing address: 235 S. Beretania Street, Room 205
No. and Street
Honolulu HI 96813
City State Zip Code

Please provide contact information for the staff or other person processing this request.

Name: Lee, Alfredo
Last name First Name

Mailing Address: (same as above)
No. and Street
City State Zip Code

Phone numbers: (808) 586-0186 (808) 586-0189 hiagribusiness@yahoo.com
Office Fax E-mail address

II. TYPE OF REQUEST

- ☒ Governor's executive order (public purposes)
☐ Right-of-entry (right to temporarily enter onto State lands for a specific purpose)
Date(s), if appropriate: _____
☐ Grant of easement (access, utility, seawall, etc.)
☐ Month-to-month revocable permit (temporary use of State lands for a specific purpose)
☐ Direct lease (long term use of State lands for a specific purpose)
☐ Direct land license (removal of timber, soil, sand, gravel, stone, etc.)
☐ Fee conveyance

Is this request being made to resolve an encroachment or other violation? () Yes (X) No

If yes, explain: _____

III. LOCATION AND AREA

If your request pertains to a specific parcel, please specify below.

Island: () Oahu () Kauai () Molokai
(x) Hawaii () Maui

Town: Ka'u District Tax Map Key: 9-7-001-001 9-6-006-010
9-5-005-003

Area: N/A acres/sq.ft. (circle one)

County Zoning: AG-20; Conservation

State Land Use: (x) Agricultural () Rural (x) Conservation () Urban

Is property located in a Special Management Area? () Yes (x) No

IV. USE

A. Fully describe your proposed use of the public lands:

The Agribusiness Development Corporation (ADC) is a state agency established to help transition Hawaii's agricultural industry from plantation operations to diversified agricultural operations. One of ADC's main goals is to preserve agricultural infrastructure, especially irrigation systems, abandoned by the various plantations, for current or future agricultural use.

For this project, ADC intends to acquire management control of the various tunnel sources located upon the three subject TMK's listed above. There are approximately 30 tunnel sources on State of Hawaii lands in the Ka'u District. Parcels 9-5-005-003 and 9-6-006-010 have only one tunnel source on each of the parcels; Parcel 9-7-001-001 has approximately 28 separate tunnel sources.

After the tunnel sources are acquired, the ADC plans on entering into a long term agreement with the newly formed KA'U AGRICULTURAL WATER COOPERATIVE DISTRICT (the district) for the operation and maintenance of the water sources. The District will be the master agency to

manage the system and it may in turn work with and enter into agreement with seven or more regional water distribution entities. Agricultural water users with the regional systems will be supplied water for crops, livestock, and orchard uses.

The various tunnels were originally developed by Hawaiian Agricultural and Hutchinson Sugar Company, both subsidiaries of C. Brewer & Company, Ltd. The water was used primarily for fluming sugarcane and for wash water in the mills. In the last few decades, some of the tunnels and transportation systems were converted to provide water to farmsteads and diversified crop endeavors. Diversified agriculture, livestock pasturage, orchard and field crops are rapidly expanding within the Ka'u district.

- B. Attach a location map showing a preliminary sketch or plot plan of your proposed project in relation to the tax maps.

Please see attached.

- C. Describe any improvements you intend to place on the land and the availability of funding for such improvements:

It is anticipated that the majority of the improvements will be done on the transmission lines and reservoir that are located on private lands within the regional water system. The water users and landowners will be responsible for funding these repairs on private property.

However it is also likely that there will be work required on State of Hawaii lands for refurbishment of the tunnel water sources and replacement or upgrades to the transportation pipelines and flumes. The amount of work performed within the public lands will need to be determined on a case by case basis. Based on priority and needs, ADC will probably request for CIP funding for the work.

- D. If constructing improvements, attach a Plan of Development showing improvements to be constructed and their location on the public lands including a timeframe for construction.

None planned at this time.

- E. Is it your opinion that an environmental assessment is required? () Yes (x) No

If no, identify exemption:

All of the various tunnels, flumes and transportation systems were an existing and permitted use since the early 1920's through the end of the sugarcane management era of the mid 1990's. Since that time, 30-day revocable permits have been issued to users. During the course of the 30-day permit applications, it was determined that improvements and upgrades to the sources and transportation systems does not need an E.A. as the work is being performed upon existing structures and systems.

If yes, describe completion of EA/EIS: _____

- F. Describe what other permits or approvals are required for this use and whether you have obtained such permits or approvals:

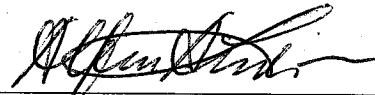
None.

V. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected or my/our lease/permit/agreement may be cancelled.

Alfredo Lee
Printed Name

Printed Name

X 
Signature

X _____
Signature

April 10, 2007
Date

KAU RIVER BASIN STUDY

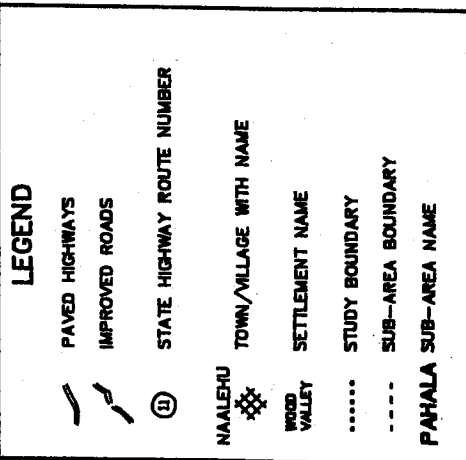


FIGURE 1
STUDY LOCATION

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
INTERIM CHAIRPERSON
MEREDITH J. CHING
JAMES A. FRAZIER
NEAL S. FUJIWARA
CHIYOME L. FUKINO, M.D.
DONNA FAY K. KIYOSAKI, P.E.
LAWRENCE H. MIIKE, M.D., J.D.

KEN C. KAWAHARA, P.E.
DEPUTY DIRECTOR

August 29, 2007

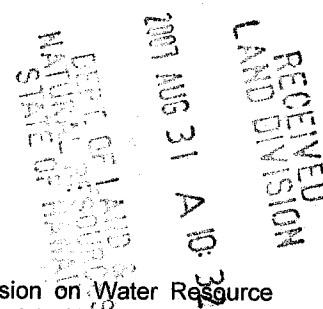
REF:

TO: Russell Tsuji, Administrator
Land Division

FROM: Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management **R**

SUBJECT: Request for set aside for Kau District irrigation water sources

FILE NO.: 07HD-122



Thank you for the opportunity to review the subject document. The Commission on Water Resource Management (CWRM) is the agency responsible for administering the State Water Code (Code). Under the Code, all waters of the State are held in trust for the benefit of the citizens of the State, therefore, all water use is subject to legally protected water rights. CWRM strongly promotes the efficient use of Hawaii's water resources through conservation measures and appropriate resource management. For more information, please refer to the State Water Code, Chapter 174C, Hawaii Revised Statutes, and Hawaii Administrative Rules, Chapters 13-167 to 13-171. These documents are available via the Internet at <http://www.hawaii.gov/dlnr/cwrn>.

Our comments related to water resources are checked off below.

- ☒ 1. We recommend coordination with the county to incorporate this project into the county's Water Use and Development Plan. Please contact the respective Planning Department and/or Department of Water Supply for further information.
- ☒ 2. We recommend coordination with the Engineering Division of the State Department of Land and Natural Resources to incorporate this project into the State Water Projects Plan.
- ☒ 3. There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality.

Permits required by CWRM: Additional information and forms are available at www.hawaii.gov/dlnr/cwrn/forms.htm.

- ☐ 4. The proposed water supply source for the project is located in a designated ground-water management area, and a Water Use Permit is required prior to use of ground water.
- ☒ 5. A Well Construction Permit(s) is (are) required before the commencement of any well construction work.
- ☐ 6. A Pump Installation Permit(s) is (are) required before ground water is developed as a source of supply for the project.

EXHIBIT "C"

DRF-IA 03/02/2006

Error! Reference source not found.

- ☐ 7. There is (are) well(s) located on or adjacent to this project. If wells are not planned to be used and will be affected by any new construction, they must be properly abandoned and sealed. A permit for well abandonment must be obtained.
- ☐ 8. Ground-water withdrawals from this project may affect streamflows, which may require an instream flow standard amendment.
- ☐ 9. A Stream Channel Alteration Permit(s) is (are) required before any alteration can be made to the bed and/or banks of a stream channel.
- ☐ 10. A Stream Diversion Works Permit(s) is (are) required before any stream diversion works is constructed or altered.
- ☐ 11. A Petition to Amend the Interim Instream Flow Standard is required for any new or expanded diversion(s) of surface water.
- ☐ 12. The planned source of water for this project has not been identified in this report. Therefore, we cannot determine what permits or petitions are required from our office, or whether there are potential impacts to water resources.
- ☐ 13. We recommend that the report identify feasible alternative non-potable water resources, including reclaimed wastewater.
- ☒ OTHER:

Tunnel modifications may require Well Construction Permits for modification from the Commission on Water Resource Management (CWRM). Inquiries should be made to the CWRM for specific sources and work before starting any modification. Once the Agribusiness Development Corporation (ADC) assumes responsibility of the tunnel sources, an itemized list of all sources should be sent to the CWRM along with notification of responsibility.

If there are any questions, please contact Ryan Imata at 587-0255.